

446.022

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: : G. Leffers
DIU-HERCEND et al :
Serial No.: 09/674,109 : Group: 1636
Filed: June 21, 2001 :
For: METHOD ...S.CERVISIAE :
475 Park Avenue South
New York, N.Y. 10016
February 25, 2004

PRELIMINARY RESPONSE

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The present CPA is being filed in order to correct an error in the election of species in response to the restriction requirement set forth in the Office Action of April 28, 2003.


In the said original application, the Examiner required a four way restriction requirement between Group I, including claims 13, 15, 16 and 18 to 28, Group II, including claims 13, 14, 16, 17 and 19 to 28, Group III, including claims 13, 15, 16 and 18 to 28 and Group IV, including claims 13, 14, 16, 17 and 19 to 28. The Examiner indicated that each of the four groups are drawn to an in vitro or in vivo assay for screening anti-mycotic substances using a particular essential gene selected from a Markush group of specific genes.

Applicants traversed the restriction requirement since there is a single generic concept set forth in the claims which are all properly examined together using a method for the screening of an anti-mycotic functionally similar mycete gene of a Markush group thereof and all of the steps are the same with only the gene being different. Therefore, it is deemed that there is but a single inventive concept and all of the claims should be examined together in the same application.

To be fully responsive, Applicants elected Group III with traverse. In the response dated August 26, 2002, Applicants' attorney inadvertently elected with traverse, the species YDR181c. The gene to be selected with traverse is gene YIL019w. Applicants are submitting herewith a petition concerning the restriction requirement.

Since the first Office Action issued more than two years after the filing of the application and it was merely a restriction requirement, Applicants request a prompt examination on its merits.

Respectfully submitted,
Muserlian, Lucas and Mercanti


Charles A. Muserlian, 19,683
Attorney for Applicant(s)
Tel. # (212) 661-8000

CAM:sd
Enclosures: Petition
Return Receipt Postcard